UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mortgage

Adversary Case Nos.: Listed on pages 2 to 4

- - - - - - - - - - - - - - - - - - - - - -x

In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - - - - - - - - - - - - - - - - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 15, 2014

2:09 PM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

Adversary proceeding: 14-01915-mg Residential Funding Company, LLC v. HSBC MORTGAGE CORPORATION (USA)
Case Management Conference

Adversary proceeding: 14-01916-mg Residential Funding Company, L.L.C. v. Greenpoint Mortgage Funding, Inc.
Case Management Conference

Adversary proceeding: 14-01926-mg Residential Funding Company, L.L.C. v. UBS Real Estate Securities, Inc.
Case Management Conference

Adversary proceeding: 14-01995-mg Rescap Liquidating Trust v. RBC Mortgage Company
Case Management Conference

Adversary proceeding: 14-01996-mg Rescap Liquidating Trust v. Summit Financial Mortgage LLC et al
Case Management Conference

Adversary proceeding: 14-01998-mg Rescap Liquidating Trust v. CMG Mortgage, Inc.
Case Management Conference

Adversary proceeding: 14-01999-mg Rescap Liquidating Trust v. Primary Capital Advisors LLC
Case Management Conference

Adversary proceeding: 14-02000-mg Rescap Liquidating Trust v. Honor Bank
Case Management Conference

Adversary proceeding: 14-02001-mg Rescap Liquidating Trust v. Cadence Bank, N.A.
Case Management Conference

Adversary proceeding: 14-02002-mg Rescap Liquidating Trust v. Citizens First Wholesale Mortgage Co.
Case Management Conference

Adversary proceeding: 14-02003-mg Rescap Liquidating Trust v. First Mariner Bank
Case Management Conference

Adversary proceeding: 14-02004-mg Rescap Liquidating Trust v. Mortgage Investors Group, Inc.
Case Management Conference

**Adversary proceeding: 14-02005-mg Rescap Liquidating Trust v. Synovus Mortgage Corp.**
**Case Management Conference**

**Adversary proceeding: 14-02008-mg Rescap Liquidating Trust v. PHH Mortgage Corp.**
**Case Management Conference**

**Adversary proceeding: 14-02009-mg Rescap Liquidating Trust v. Bank of America, N.A. et al**
**Case Management Conference**

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P R O C E E D I N G S

THE COURT: Okay. We're here in Residential Capital 12-12020, actually, more particularly, in a series of adversary proceedings. I'll read the case numbers. They're all 14- and I'll just read the last digits. 01915, 01916, 01926, 01995, 01996, 01998, 01999, 02000, 02001, 02003, 02004, 02005, 02008, 02009.

Mr. Nesser?

MR. NESSER: Good afternoon, Your Honor. Isaac Nesser for the ResCap Liquidating Trust. Here with me today are Brad Ehrlichman, at my firm, Quinn Emanuel Urquhart & Sullivan, as well as Jeff Lipps of the Carpenter Lipps firm.

As Your Honor indicated we're here just to, I think, primarily follow up on discussion from our last appearance concerning case management. If I can start, Your Honor, with just a few updates since last we were here. There's been some movement in terms of settlement.

First, Citizens First, which is a case in this court and before Your Honor; we'd previously indicated that that case had settled, in principle. That agreement is now signed. We expect to be filing a discontinuance shortly.

Also First Republic and Bank of America -- that's case number 14-2009 -- has settled, in principle, subject to documentation. And we'll of course keep the Court updated as that progresses.

As well, in Minnesota there's been some movement. The case against First Citizens Bank, which is 13-CV-3514, has settled, in principle, as well, our case against Countrywide 14-CV-1743 is settled, in principle. So there's been quite a lot of activity.

Back in New York, in the district court, Judge Abrams, as I think Your Honor may already know, issued an order referring our cases against SunTrust to Your Honor.

THE COURT: Has it hit the docket here yet?

MR. NESSER: It has not yet hit the docket. If there's anything that we ought to be doing to facilitate that, we're happy to do so.

THE COURT: It'll happen.

MR. NESSER: We have involved --

THE COURT: Is anybody -- is counsel for SunTrust present in the courtroom?

MR. DOHERTY: I am, Your Honor. John Doherty, Alston & Bird.

THE COURT: Thanks. Nice to see you.

MR. NESSER: And we've made sure that counsel for SunTrust has been involved, or at least copied on correspondence --

THE COURT: Sure.

MR. NESSER: -- through the meet and confer process. Also, in the district court of Judge Daniels last week had us

in for a hearing on UBS's motion to withdraw the reference. Judge Daniels, this morning, issued an order denying that motion, without prejudice to reassertion, after Your Honor resolves UBS's pending motion --

THE COURT: I saw the --

MR. NESSER: -- to remand.

THE COURT: -- an ECF reference to his order, but obviously the transcript isn't available yet.

MR. NESSER: That's right. And would it be helpful for Your Honor to have that transcript?

THE COURT: When it's ready, you can forward it to me.

MR. NESSER: As well, Your Honor, otherwise in the district court, a number of the defendants here have filed motions to withdraw their reference and to transfer, and those motions are proceeding on the ordinarily schedule.

THE COURT: It would be --

MR. NESSER: Turning to --

THE COURT: -- helpful, Mr. Nesser, if you could post on ECF a list of the cases in which motions to withdraw the reference have been filed. I wouldn't necessarily see them. They get filed here --

MR. NESSER: Yes.

THE COURT: -- obviously, and then referred to the district court, and without going back and looking at the docket in every one of the cases, it's harder for me to track

that, so it would helpful.

MR. NESSER: I can identify those now or --

THE COURT: No.

MR. NESSER: -- we can file it.

THE COURT: That's fine.

MR. NESSER: Turning to case management, Your Honor, the parties, over the last couple of weeks, have, I think it's fair to say, met and conferred extensively, and for the most part, rather productively, to prepare the proposed case management order that we filed on Friday, as Your Honor had directed.

We've been able to resolve, consensually, a number of disputed issues. There are just a handful that are remaining. The first of those -- and I'll just march through them, unless Your Honor has a different preference -- relates to the page limits --

THE COURT: I do have a different preference.

MR. NESSER: Okay.

THE COURT: So I did review -- you submitted a draft of the order showing plaintiff's proposals and defendants' proposals, and I've been through that. In addition to what was in the proposal, or either proposal, I've made some other changes --

MR. NESSER: Okay.

THE COURT: -- to reflect my own thoughts about it. I

think before we do that, let me see whether any of the defendants want to be heard preliminarily.

What I propose to do with respect to the case management order -- and I commend everybody because I think you've made very substantial progress in coming to an agreement. I don't see the differences as that substantial, and I appreciate the work that went into that.

But let me see, does anybody -- any of the defendants' counsel wish to be heard before we go further? You don't have to. Okay. That's fine.

UNIDENTIFIED SPEAKER: We can hear you --

THE COURT: Okay. That's fine. So let me flag the issues that I want to discuss, and maybe I'll tell you how I've resolved some of the differences as well.

So I'll start with -- I'm looking at the draft that was submitted to me that showed both plaintiff proposals and defendants' proposals. And I can tell you what else I've done. So in the very opening paragraph -- and when I enter an order, you'll obviously get to see it, so -- but I'm just adding a sentence to the very opening paragraph to the effect that this order may be made applicable to additional adversary proceedings upon entry of a separate order providing for such relief. So that if any other cases, like Judge Abrams' case, hasn't hit the docket here yet, I probably won't wait for that to happen to enter a case management order, but a separate

order will just be entered doing that.

So in paragraph 3, on lead docket, I conferred with the Clerk of Court, to see how we could affect what I think you're trying to accomplish, and so I'll read to you what I propose to do. So there's a 2(a), "Any filing affecting two or more of the above-captioned adversary proceedings shall be filed, for administrative purposes only, in a newly created docket, defined as the central docket, captioned In re: ResCap Liquidating Trust Mortgage Purchase Litigation". That's going to be the name. And then there will be an adversary proceeding number. It hasn't been opened yet. I have the number. They picked a number way down the line so that it doesn't interfere with anything.

And "This filing should include the caption" -- "The filing should include the caption of the central docket in each case to which it applies. A filing on the central docket shall be sufficient to give notice to all parties in these proceedings. Any filing affecting only a single case shall be filed with that case only. At such time as all cases included within the central docket have been resolved, plaintiff's counsel shall make a motion to close the case for the central docket."

There's been some past experience where it's just sat and nobody's done anything and so -- and then paragraph 2(b), "A docket entry should be made in each adversary proceeding

that is now or hereafter become subject to this order substantially as follows", and it just references the central docket and so people know to go look there. Okay.

In paragraph 4, on the initial motion practice, against my better judgment, I've sided with the defendants on the page count, but I'll be very inhospitable if somebody comes to me -- yeah it's thundering now. I just came in and it was -- just started. I'll be very inhospitable if people come and ask for longer pages. So the defendants want thirty-five/fifteen, and I put that in. There'll be thunder and lightning if anybody asks for more.

Okay. So one of the things I've tried to do, and everybody ought to keep this in mind, when you do orders that relate to filing of pleadings, do everything in seven-day multiples. It reflects the changes in the rules. So instead of thirty days, I've put twenty-eight. It avoids the problem about weekends and things like that. So when they changed the Civil Rules and the Bankruptcy Rules, they did everything in multiples of seven. I've tried to do that. If it's a date that doesn't have to do with filing a pleading, I haven't been so concerned about it.

So in 4(b), the thirty has turned to twenty-eight, and in paragraph 5, the thirty has turned to twenty-eight.

Paragraph 6, there were no disagreements. I guess in 6(b) I'm going to change the thirty days to twenty-eight days.

MR. NESSER: Your Honor, there was some disagreement on 4(c).

THE COURT: Hang on just a second. Oh, I've struck it. I don't think it's needed.

Okay. So 6(b), the thirty changes to twenty-eight.

On 8(g), presumptive deposition limits, I've gone with the plaintiff's proposal, but I want to make something clear so that -- if people don't have it in front of them, this is the presumptive limit on the length of depositions. The presumptive limit is seven hours, but when I'm saying seven hours, I fully anticipate that some of these depositions are going to be more than seven-hour depositions, and I expect the parties, in good faith, to seek to resolve the issue.

So what happens if you're taking a deposition and you get to seven hours and everybody sort of agrees, yeah, there's -- it's nonduplicative and there really is additional material to be covered; you don't have to come back to me to increase the seven-hour limit. The only time you have to come to me is if you disagree about the length of the deposition.

What I expect to happen is that the parties are going to work together in good faith to agree on reasonable limits. The seven-hour limit -- the presumptive limit is intended to force you to agree, and if you don't agree, the seven-hour limit applies. And then when somebody arranges a prompt telephone conference with the Court, and I find out that Mr.

Nesser, or one of his colleagues, has unreasonably tried to impose a seven-hour limit, I'm going to say: come on, you're kidding, this is really -- this is a two or three-day deposition; you're not complaining that they're being duplicative.

So it's just a safety valve, but I really do expect I'm never going to hear from you about the length of the depositions. People in good faith are going to work it out, okay? So yes, I've put the seven-hour presumptive limit; I expect it'll be rare, if ever, that I'm going to hear that people are disagreeing about what the length of a deposition should be. Okay?

A lot of depositions are going to be three or four hours or two hours or one hour. It's just what I don't want to happen is everybody thinks every deposition is going to be five-day deposition; they're going to wear people down. And that isn't going to happen. Okay? All right.

All right, expert discovery. I've adopted the plaintiff's proposal of 180 days and then 45 days. I fully anticipate, if the cases stay here with me, and we get further down the road, we're going to have a discussion about this at a subsequent case management conference. And if the defendants persuade me, given the number of experts and the amount of work that has to be done, we need more time, I'm going to grant more time. Okay? But we're going to start with the dates, the 180

days to complete expert discovery and the other dates that are in the plaintiff's proposal.

Okay. Sampling I do want to talk about, because at least what I have down on my paper is a little different than what either side has proposed. I'm closer to the plaintiff's proposal, but not quite there.

Mr. Nesser, have you had discussions so far with defendants' counsel about sampling?

MR. NESSER: We have, Your Honor, and what I can report is yesterday I was informed by counsel for HSBC -- and I don't want to put words in his mouth, but I was informed by counsel for HSBC that, in the abstract, they are amenable to sampling, as an approach in this case. Of course, they reserve their right to dispute the particular methodology that we would propose, but that they're open to sampling as an approach, and moreover, that they, I think, are conceptually in agreement that the sample ought to at least be the starting point, if not the end point, for discovery. He's obviously reserved his rights to seek additional documents, but it seemed to me as if, in the first instance, there was some sense that the sample ought to be the focus of discovery, if not the entirety.

As for the other defendants, there are three, maybe more or less, that we expect probably will not be sampling cases.

THE COURT: Well, somebody told me last time there

were only eighty loans --

MR. NESSER: Yeah, some of these cases --

THE COURT: -- you're not going to sample when you have eighty loans.

MR. NESSER: Yeah, that's right. So some of these cases are pretty small, and we expect that those won't be sampling cases. The final decision on those we'll be making over the next couple of week.

Other than that, Your Honor, we've asked -- I've asked, repeatedly, for the defendants to give me some sense as to, number one, whether they're amenable to sampling, in principle, number two, whether they're amenable to limiting discovery to the sample and have not, as far as I can recall, heard any responses.

THE COURT: So your proposal was that you would -- fourteen days after entry of the order you would propose a sampling methodology to any defendant as to which plaintiff intends to pursue -- prove through sampling. That's fine. You can do that in fourteen days, I take it. You can be ready to do that within fourteen days?

MR. NESSER: Yes, we expect to be able to.

THE COURT: Okay. I don't -- I mean, one size doesn't fit all. If somebody's got just eighty loans, you're not going to sample. If someone's got 10,000 loans, sampling is a little different than if there's 3,000 loans.

MR. NESSER: Yes.

THE COURT: You obviously have your sampling expert, I take it.

MR. NESSER: We've been discussing sampling with various folks, yes.

THE COURT: So I'm fine about your holding your feet to the fire and saying propose the sampling methodology in the fourteen days. I also contemplate, but I want to hear defendants' counsel, about saying within fourteen days after they receive the proposed methodology they'll inform you whether they agree to the proposed methodology.

Where I differ, somewhat, with what you proposed is for every sampling -- defendant that does not agree to the methodology, the parties shall meet and confer within fourteen days after notification that the defendant does not agree to the proposed methodology in an effort to agree on a sampling methodology.

Okay. You're going to make a proposal to them, they're going to come back and say no. Maybe they're going to make a counter-proposal or maybe they'll say not now, never ever. That's a different situation. If they come back with an alternate proposal, I want to give you a couple of weeks to see if you can work it out rather than firing off a motion.

MR. NESSER: Um-hum.

THE COURT: So I've built in -- and I want to hear

from defendants about it; I'm not saying this is exactly what I'm going to go with, but the concept I have is you give them your proposed methodology, if you're going to propose to sample, they come back and they say -- if they say yes, fine; if they say no -- if they say no, but we're open to sampling, but you've got to do this, I want you to go and -- it works best if you get whoever you're going to use to sit down with whoever they're going to use, sampling expert, and try and agree. And you avoid filing your in limine motion with respect to them. So I want to build in a little bit of time to give you a chance to work out the differences.

And then with respect to -- but I want it done sooner rather than later, and that's why I rejected the defendants' proposal. But I want to see if people can work it out.

I thought that your proposed page limits and briefing were fine with me. And I suspect if somehow it turns out to be more complicated, I'm going to hear cries that we need more pages. But we'll -- so I should raise this right now. With respect to any page limits that have been put in the order, I'm hoping that people will abide by the page limits. But my practice is not to require motions; if the defendants are working on a motion to dismiss in the omnibus motion, they're at thirty-eight or thirty-nine pages and the -- it's at thirty-five pages.

So you send a letter to the Court, with a copy to

opposing coun -- first you ask them if they have an objection. If they don't, you send a letter to the Court and you tell me -- I don't want motions, okay? Given the number of counsel involved, telephone isn't -- I think everybody needs to know what's going on. So just send a quick letter to the Court, tell me what opposing counsel -- whether they consent or not. I don't always agree. And if you say I want seventy-five pages and the other side says yes, it isn't happening, okay? So don't think just because the other side consents that I will agree. But I don't want motions; just send a letter to the Court; you'll get an answer very quickly, okay? Sometimes these issues -- you're two days away from the deadline for filing a brief, and you need to know. Okay? You'll get an answer quickly, okay? I just -- that goes for all the motion practice, okay? Shorter is better than longer.

And the other observation I'd make is -- I'm sure none of you would ever do this, but I get so many briefs, the first ten pages of which repeat the history of ResCap. Don't. Okay? Just deal with the issue -- just go right into the issue that you're dealing with. Save the preliminaries. I've lived with the case. All right? It's a lot easier to make the page limit when you don't give me eight pages of history that don't really bear on the motion that's before the Court. Okay.

Paragraph 12 on ADR. Again, I want to hear from both sets of counsel. So I've broken this down into subparagraphs

(a), (b), (c), (d), (e), (f), and (g), but here's where my thinking is. I said at the last hearing that I believe -- first off, I'm a big believer in mediation, but to be meaningful, the parties have to have -- particularly the defendant -- they have to have sufficient information to make an intelligent decision about it.

So you indicated a disagreement. You listed -- said that the plaintiffs -- the defendants wanted three categories of information. You said you will only do two of the three categories of information. I'm prepared to order you to provide the information in categories 1 and 2.

In the draft that I have, plaintiff -- "The Court believes that these actions could benefit from early mediation. Mediation will be most meaningful if plaintiff has first provided defendants with information helpful to the defendants in evaluating the settlement alternatives. The defendants have identified categories of information that they believe would facilitate evaluation of the settlement. Plaintiff has agreed promptly to deliver to defendant, subject to Federal Rule of Evidence 408, all the reasonably accessible nonprivileged information with respect to two of the three categories of information requested by defendants. Those categories are as follows" -- and I just copied exactly. "The Court directs that all reasonably accessible nonprivileged information in the above 2 categories shall be produced to defendants, subject to

FRE 408, within twenty-eight days from the date of the order. Okay.

Then in the next subparagraph (y), and I really want to test this out, whether you think you're prepared to do this, because I really would like this to happen. It says, "Counsel for all parties shall confer promptly seeking to agree on a mediator to conduct a global omnibus mediation (to be followed, if the mediator deems appropriate, with separate mediation sessions in each of the cases). The mediation shall commence as soon as possible after the twenty-eight-day period in which plaintiff will produce documents to the defendants as provided in this paragraph. If the parties cannot agree on a single mediator, within fourteen days from the date of the order, they shall notify the Court which shall then determine how a mediator shall be appointed."

Then in the next subparagraph, and I want to hear from you about this, "The cost of the mediator shall be split evenly between plaintiff and defendants for all omnibus mediation sessions and the work of the mediator in connection therewith. The cost of the mediator shall be split evenly between the plaintiff and the defendant for any separate mediation sessions and the work of the mediator in connection therewith."

And then the next subparagraph, "The mediator is authorized to direct the parties to provide any additional nonprivileged information that the mediator believes would be

helpful in resolving the cases." So if the defendants prevail on the mediator, look, we really need this additional categories of document, I'm going to leave it, as I always do, to the mediator to decide what should happen.

And then the next subparagraph, "Unless otherwise ordered by the Court, the omnibus mediation and the separate mediation shall be concluded within ninety days of the initial omnibus mediation session. Unless otherwise ordered by the Court, none of the deadlines for any other pre-trial proceedings set forth in this order shall be extended or modified as a result of any ongoing mediation."

And you ought to be able to figure out in ninety days -- I think you'll settle some cases and you won't settle some others, but let's get it -- it doesn't stop you to continue to settle -- talk settlement during the case, but I think ninety days to see whether you can do it.

Let me stop here. I mean, the real question is do you think, realistically, you can all agree on one person to be a mediator, an omnibus mediator?

MR. NESSER: We could certainly try, and I'm hopeful that we'll be able to agree. Obviously easier for me to say than fifteen sets of defendants.

THE COURT: Yes. So what I've done in cases like Dewey -- but there are different kinds of cases; I've got all of these avoidance actions, right, and so I said identify five

mediators, but they're mediating separate cases. Limit the number, so if one has a conflict another one doesn't.

MR. NESSER: Right.

THE COURT: And people -- they have a learning curve, they get up to speed, they're familiar with the case. I think, to start out, if you can agree on one mediator, I suspect you -- most all of you will be able to agree on the kind of person you want to be a mediator, somebody who you know will be fair, who may have some knowledge about the issues involved, and see where you go.

I mean, so when I've done the five mediators, no one's ever come back to me and said we couldn't agree on one. I think, in some cases, I've done three. I've been reluctant to have too small a number, but I think -- my sense, and I could be wrong about this, is that defendants who are seriously interested in settling the case, if a reasonable settlement can be worked out, to put it euphemistically, don't want to have egg on their face because somebody else made a better deal than they did. And sort of coming up with some -- the benefit of the omnibus mediation is you may be able, in the context of an omnibus mediation, to agree on a set of principles that, when applied to individual cases, will give a number that everybody thinks is fair. So I think there's an advantage of doing it. It's different than the normal preference kind of cases that come up. So let me see whether there's anything else that I

wanted to give a chance for people to talk about.

I think that's pretty well it. Do you want to comment, or do you want to give others a chance to address any of these issues, Mr. Nesser?

MR. NESSER: No, Your Honor, the only other issue I'd had on my list was whether you had any further guidance for us in terms of coordination with Minnesota.

THE COURT: Well, so I put two things in this draft. One paragraph says, "Plaintiff shall provide a copy of this order to each district judge in the Southern District of New York before whom a motion to withdraw the reference in any of the cases carried by this order had been filed." It's just to let him know things are moving along.

And then I put a paragraph, and I debated whether to have you do it or whether I would do it. But the way I have it drafted is, "The Court intends to send a copy of this order to each judge in the United States District Court for the District of Minnesota before whom a similar case commenced by Residential Funding Company, LLC or ResCap Liquidating Trust is currently pending, for the purpose of permitting each judge to consider whether a common schedule should be established in all similar cases raising common issues, whether pending in New York or Minnesota. The Court is prepared to adjust the schedules set forth in this order to accommodate a common schedule in all of the cases."

So if there -- quite frankly, if there was one or two judges that had the cases, I would tell you I just want to pick -- I want to call the judge. Ten judges, it's just not realistic.

MR. NESSER: Your Honor, what I can tell you, in that respect, is that a couple of the ju -- two of the judges in front of whom -- two of the district court judges, in front of whom we appeared in Minnesota, suggested, without committing, that it seemed to them as if this case might be appropriate for referral to a single magistrate in Minnesota for the purposes of coordinating at least discovery. It's not clear to us yet whether that will happen and how that will happen, and whether the views of the two judges we heard from reflect the views of other judges in that district. But certainly, if that were to occur, you would wind up with one judge in Minnesota.

THE COURT: Yes. So what I probably -- I'll listen to what everybody has to say, but what I would probably do is attach this to an e-mail addressed to the judges. So if there weren't ten, I would probably do it as a draft and suggest --

MR. NESSER: Right.

THE COURT: -- but here I'll just enter an order, send it, say what I said. Then I'm certainly open to adjusting the schedule if others wa -- I think a common schedule makes a lot of sense.

Other points you want to make, Mr. Nesser?

MR. NESSER: Nothing else, Your Honor.
THE COURT: So let me hear from defendants' counsel.
MR. JOHNSON: Good afternoon, Your Honor. Matt Johnson of Williams & Connoly, representing HSBC Mortgage Corp.
I'm going to be very brief. The only issues that I would like to get clarification --
THE COURT: Um-hum.
MR. JOHNSON: -- on are with respect to the ADR issue.
THE COURT: Yes.
MR. JOHNSON: Has Your Honor proposed a time limit, after defendants receive those two categories of documents, for the omnibus mediation to occur?
THE COURT: Well, I suppose, yes, because I've said -- I said as soon -- the mediation should start as soon as reasonable possible after the twenty-eight days to get the documents, okay, and that's going to be subject to a lot of schedules, okay, and the mediator's schedule. Okay? And I've said ninety days from the first mediation session. So I haven't put an absolute deadline, because you're going to have -- given the number of lawyers and a mediator's schedule, I would hope that it would happen -- you ought to be able to get something scheduled. And then I -- once it starts, I want ninety days.
MR. JOHNSON: Okay.
THE COURT: And that's -- does that work for you, Mr.

Johnson?

MR. JOHNSON: I think it does, subject to -- and I think Your Honor's made this clear, if we need to come back and it's going to be a little after ninety days, we'll let the Court know and we'll come back. I think the -- frankly, I think the bigger issue than the coordination of schedules is going to be the chance to actually use this information and evaluate it to look at each defendants' respective case and prior to going to mediation, figuring out, okay, what situation are we in, what does this look like. Defendants, quite honestly, just are not in a position to do that now, and that's why we've requested this information.

Secondly, I had a question regarding defendants' proposed paragraph 14 and whether that was included in its -- it was entitled "No waiver or prejudice" --

THE COURT: Oh, I put that in.

MR. JOHNSON: Okay. Okay.

THE COURT: I did.

MR. JOHNSON: Thank you.

THE COURT: I'm sorry I didn't -- I used -- I included it exactly as you drafted it.

MR. JOHNSON: Okay. And lastly, Your Honor, just to -- lastly, on my account, just to update Your Honor on, kind of, the goings on in the litigation -- and I would agree with Mr. Nesser that we engaged in extensive meet and confer

sessions, with both defendants, collectively, and also with plaintiff's counsel, with respect to the CMO. And I certainly hope that, going forward, we can continue to cooperate.

In that regard, and following up on Your Honor's comment at the last scheduling conference, defendants collectively sent a letter yesterday to Mr. Nesser regarding priority discovery requests. Obviously we haven't served discovery requests yet, but we sent this letter to let plaintiffs know that discovery requests would be coming, and I think there were six -- yeah, six particular categories of documents that we let plaintiffs know -- that we let plaintiff know we would be seeking in our discovery request, and that we would hope plaintiff would agree to prioritize the production of.

THE COURT: So we heard -- and what I would hope would happen, and it sounds like this is what you've done; you told them what you want first.

MR. JOHNSON: Exactly.

THE COURT: Okay. And my view is they should try and honor what you want first. I got a little nervous when I heard you say "priority discovery". I don't believe in priority of discovery because you served your request before they served their request, okay.

But on the point of when you tell them it would be most helpful to us to get this first, the order provides for

rolling discovery. And I don't appreciate when the response of the opposing party is to provide the dribble first that's the least meaningful to the case. Okay. So sometimes it's hard to get the stuff you want first, but you have -- I assume -- look, I assume you're going to work it out. And you're all good counsel, and I assume you're going to work it out, and I'm not going to hear about it. And if you have a problem, you arrange a call and we deal with it promptly without any writings, okay?

MR. JOHNSON: Understood, Your Honor. Would you like a copy of the letter or --

THE COURT: I don't think I need to see it --

MR. JOHNSON: Okay.

THE COURT: -- unless Mr. Nesser thinks I need to see it.

MR. NESSER: No, Your Honor.

THE COURT: Okay.

MR. JOHNSON: And with respect to sampling, Your Honor --

THE COURT: Yes.

MR. JOHNSON: -- it's a very, very important issue, and one that certainly is worthy for discussion. And on that issue, my partner, Hat Wiegmann, is going to speak. He's been --

THE COURT: Okay.

MR. JOHNSON: -- focused on this issue extensively.

THE COURT: Thank you.

MR. WIEGMANN: Good afternoon, Your Honor. Hat Wiegmann from Williams & Connoly, on behalf of HSBC Mortgage.

Your Honor, I won't try to talk you out of our -- agreeing to our original proposal, which was to wait until expert discovery to decide the sampling methodology.

THE COURT: You're right in not trying to talk me out of it.

MR. WIEGMANN: But what I would say is -- I guess I would beg for as much time as possible. To our knowledge, there has never been a case in which a court has approved a sampling methodology for an originator's specific methodology applied across multiple securitizations, which is what we have here. That was not the case in the FHFA litigation, much simpler sampling problem. It's very complicated here, very factual-specific. It's going to take a lot of careful and complex assessment, and we think that the more complete the factual record on which that is done, the better. Right now, if we proceed under the plaintiff's schedule, we are really hamstrung, because we would be assessing this in a vacuum. Right now, we don't know the loans that are at issue in the case, at least in our complaint, the HSBC --

THE COURT: How many loans did you sell to them?

MR. WIEGMANN: I don't even have that information after

THE COURT: Well, that you ought to you should have that in hand.

MR. WIEGMANN: We've been work

THE COURT: I can't believe you don't have that information.

MR. WIEGMANN: Well, Your Honor, we've sold them over a long

THE COURT: Ask Mr. Johnson. Do you know

MR. WIEGMANN: Over a long period of time it was 3,500, but I don't know whether all of those

THE COURT: That's not a lot of loans.

MR. WIEGMANN: all of those are at issue in the case or not.

THE COURT: But that 3,500 loans is not a lot of loans.

MR. WIEGMANN: Well, okay. Thirty-five hundred loans.

THE COURT: In FHA FHFA, you know, it started out talking about 20 or 30,000 loans there were.

MR. WIEGMANN: Right. The samples in that case were larger than the loans that are at issue in this case.

THE COURT: No, well no they weren't, but that's okay.

MR. WIEGMANN: So, Your Honor, we don't know what securitizations the loans were put into. We don't have so we don't know we're not able to compare our loans to the

other loans that are in those pools. We don't have the loan data tapes that have the relevant information, both for our loans and for the other loans in the pool. We need to be able to assess the homogeneity of the sample.

My only point is there's a great deal of work to be done.

THE COURT: May I ask you this? Do you have a sampling expert?

MR. WIEGMANN: We have retained a sampling expert.

THE COURT: So I would just say that and you may be very experienced in dealing with statistical sampling issues, but what I found as a practicing lawyer and since I've been on the bench is that lawyers are very poor interlocutors with respect to the nitty-gritty details, and that what you should be endeavoring to do is you and your sampling expert sit down with Mr. Nesser and his sampling expert and start to hash this out. And I think you will resolve a lot of the issues. But if you're going to be the interlocutor for your person and Mr. Nesser or his colleagues for his person, the next thing I'll be hearing is we need months more to discuss this.

Okay. What I contemplate is look, if you wind up litigating the case to judgment, fine. Whatever court that is, that'll happen. History, in all the courts that have had RMBS related cases, most of the cases settle. Do it painlessly and get it done more quickly.

I don't think I'm equipped at this point to address the substance. I understand the points you've made, and I'm not ready to adjust the schedule. I think what I've tried to build is this concept of they give you their methodology. You respond. You say no, never, in which case I'll have a motion, or you say we're open to the concept but this doesn't work. We don't have enough information. We don't do this. Then you can sit and confer, get your experts together. You better have your sampling expert.

I can't imagine, Mr. Nesser, you're proposing a methodology where you don't have your expert already engaged.

MR. NESSER: We do, Your Honor.

THE COURT: Okay. So your first order of business is to get them together. I don't care what your ground rules are. If you want it without prejudice, that it can't be used for any purpose other than to resolve this thing, neither of you have to worry about ammunition for later deposition.

Okay? I want you to work this out as a practical matter and don't be the interlocutor to do it. Get your experts together with you, but

MR. WIEGMANN: Understood, Your Honor. So we will take up the issue with the plaintiffs.

THE COURT: Okay.

MR. WIEGMANN: If we don't have the data to appropriately assess the methodology then we will inform the

Court in our motion papers, if it comes to that, that we don't have the data to competently assess what they've done.

THE COURT: Okay.

MR. WIEGMANN: And we'll alert you to that.

THE COURT: Okay. Anything else?

MR. WIEGMANN: Thank you, Your Honor.

THE COURT: Thank you very much.

Mr. Johnson, is there anything else you wanted to

MR. JOHNSON: No, Your Honor. I think there may be some other defendants

THE COURT: Okay.

MR. JOHNSON: who would like to be heard.

THE COURT: That's fine.

MR. JOHNSON: Anybody else want to be heard? Come on up.

MR. FUMERTON: Yes, Your Honor. Robert Fumerton from Skadden, Arps on behalf of UBS RESI. Like Mr. Wiegmann, we've dealt with this sampling issue extensively on behalf of UBS and FHFA in the NCUA cases. As a threshold issue my client, unlike a lot of other defendants here, did not originate a single loan at issue here. Plaintiff alleges there are 1,900 loans we sold to them. We don't have any of those loan files. As far as we know plaintiff doesn't have any of those loan files. And locating those loan files, and, just as importantly, the applicable loan guidelines, is an enormous task, and in many

instances in other litigations we've had against this law firm they've been only able to locate barely half of loan files in the proposed sample.

Your Honor, Your Honor's asking that we meet and confer with plaintiff about proposed sampling methodology. We have no problem, in the abstract, if plaintiff attempts to prove their case through sampling. We think there's going to be such a small number of loans after our motion to dismiss that sampling may not be necessary.

THE COURT: You really think so?

MR. FUMERTON: But, Your Honor, in an adversarial system, respectfully, we can't be in a position where our expert has to say you're using this proposed methodology to try to prove claims against our client. You should do this differently. You should sample more. You should do a different type of sampling. You should get more originators.

THE COURT: You know, I've read some transcripts of arguments in some of the cases where counsel standing in your shoes have it sounds like you're almost reading the transcripts of the arguments that were made and rejected in those cases.

Your argument is premature, okay? I take your point that UBS didn't originate any of the loans. How many originators did it buy loans from?

MR. FUMERTON: We bought we bought

THE COURT: Yes.

MR. FUMERTON: We bought loans from twenty-five, thirty originators. We don't know, because plaintiff hasn't identified the specific loans at issue, how many originators are at issue. But what I can tell Your Honor is no one disagrees, in the abstract, that sampling can work under certain circumstances. The two ways sampling falls apart in these cases are one, the sample's not representative of the target population, and, two, the margin of error is too high. We can't address that based on abstract methodology. We can't even address that based on a list of loan numbers. A list of loan numbers on what they claim their sample is going to be is a fairy tale. They can't find those loan files. We don't have them. They don't have them. In the other cases we're litigating before Judge Cote right now, in the MARM Trust v. UBS case they were only able to find half of the loan files in their sample. For one originator they couldn't find any of them.

THE COURT: May I ask you? Are these cases that UBS has brought against originators complaining about breach of representations and warranties in the loans you purchased?

MR. FUMERTON: No. These are cases where we're sued by a trustee. We're sued by Fannie and Freddie in the FHFA litigation.

THE COURT: Right.

MR. FUMERTON: And we did make these arguments to Judge Cote, but she didn't disagree with them. She recognized the difficulty in finding loan files and finding guidelines. That's why Judge Cote did not approve any sampling methodology. She did not allow them to make a motion in limine, which is exactly what they're seeking here.

What Judge Cote did is something very different. She said based on the list of loan files they provided, given the information you have at this time, if you have a 702 challenge based on that information you have to make it now. She did not endorse a sampling methodology or preclude defendants from coming back after a full record and saying look. You couldn't find these loan files. Therefore your sample is not representative, your margin of error is too high, and all of the other arguments that we'll have under 702.

THE COURT: Okay. So I would just come back to this. I'm not rejecting your argument. I'm just telling you your argument is premature, okay?

But let me ask Mr. Nesser. How are you going to propose a sampling methodology to UBS? Do you have loan files? Do you have the loan numbers? What information do you have specifically with respect to the UBS loans on which you're suing?

MR. NESSER: Your Honor, we know what the loans are. We know what the loan numbers are. We know what the loan types

are. We know what the performance of those loans has been. And so we have, obviously, additional information.

All of this information, by the way, we believe is equally available to counsel for UBS. And based on the information that we have available we believe that we can generate a sampling methodology that is enough to have a meaningful meet and confer, certainly, as well as enough to have a meaningful motion to Your Honor.

THE COURT: So what I'm approving is a provision in the case management order that tells you how to go about it from today. I thought about whether the fourteen-fourteen-fourteen time periods were enough time, whether that was enough time. And it may or may not be. And it may be that Mr. Fumerton is going to convince me you make your motion he's going to convince me that with respect to UBS the Court can't approve sampling methodology for the reasons that he argued, which it's almost like a broken record of transcripts I've read in other cases where the argument's been made and rejected. Okay? I don't know, because I don't have facts today. And I either will have facts when you make a motion or you'll work it out, which is the preferable course.

I'm not going to pretermit the exercise to try and this case cries out for sampling methodologies, plural, because it may not be the same for all. One size doesn't fit all. And it's my intention to move these cases. It may be you'll be

unsuccessful with your motion, because you won't be able to satisfy the Court that sufficient information is available at the present time. We don't whether the sample is going to work, not work, et cetera. But we'll see.

All right. Anybody else want to be heard?

MR. FUMERTON: Your Honor, may I make two brief points?

THE COURT: If it's about sampling, I don't want to hear it.

MR. FUMERTON: Can I hand up a decision from Judge O'Toole just two months ago on this exact issue in

THE COURT: Sure.

MR. FUMERTON: the Federal Home Loan Bank case?

THE COURT: Yes. Did you give it to Mr. Nesser? Thank you.

Okay. I'm not making any decision for today. The only decision I'm making is what's going into the case management order, and we'll see. Yes, it's going to move you along. And we'll see what happens.

Okay? You have any other points other than sampling?

MR. FUMERTON: Your Honor, just for clarification

THE COURT: Do you have any other points other than sampling?

MR. FINKELSTEIN: Your Honor, this is Mark Finkelstein

MR. FUMERTON: Thank you, Your Honor.

THE COURT: Hold on.

MR. FINKELSTEIN: for Cadence Bank.

THE COURT: Hold on.

MR. FINKELSTEIN: Yes, sir.

THE COURT: All right. Go ahead. Identify yourself again.

MR. FINKELSTEIN: This is Mark Finkelstein, F-I-N-K-E-L-S-T-E-I-N, for Cadence Bank.

THE COURT: Thank you. Go ahead.

MR. FINKELSTEIN: You're welcome. My question is I'm new to this, so I don't understand how why it's structured the way it is, but I'm wondering why at the time that plaintiff tells us it intends to pursue proof through sampling with respect to my client, why plaintiff can't also provide me not only with the methodology but with the proposed sample? Why do I have to commit to agree to plaintiff's sampling methodology before I know what the sample looks like?

It seems like it's a Catch-22 or a trick. And maybe I'm just the only one who sees it that way, but I would prefer to visit with plaintiff about all the loans that he thinks are at issue, which is the information I've been requesting since the inception of this case, so that we can identify those loans with respect to which plaintiff thinks there were defaults or other failures to comply with the representations and warranties that plaintiff thinks are actionable, and then we

can look at those loan files. Even though there are 6,500 of them so far I don't view that as a big number of loans. And so my problem is if I know the methodology and I know which loans are at issue I can readily respond to plaintiff within probably not fourteen days but some reasonable period of time

THE COURT: No, fourteen days.

MR. FINKELSTEIN: about whether or not we're in dispute.

THE COURT: No, fourteen days.

MR. FINKELSTEIN: Pardon me?

THE COURT: No, you're going to have fourteen days.

MR. FINKELSTEIN: No, I know well, the way it's structured I have fourteen days to say whether or not I agree to the methodology, but why can't I also have the sample?

THE COURT: Well, it sounds like you've already been speaking with Mr. Nesser. If you haven't, I encourage you to do it. And certainly when you get their proposed sampling methodology, to the extent you think it's disclosed insufficient information don't wait the fourteen days to file an objection. Pick up the phone. You ought to be talking to each other right now and trying to hammer out as many of these issues as possible.

I'm not unsympathetic to the point you're raising, and I'm not looking forward to having a large in limine motion filed with factual issues as to many of the defendants such

that the Court can't resolve the motion at that point or has to deny it without prejudice. That's not going to advantage the plaintiff if that's the result. But nor do I take kindly to the approach of a defendant that sits back its fourteen days, files an objection that just says you haven't given us sufficient information, and then basically does a rope-a-dope defense rather than sit down and try and work it out.

I expect the parties to discuss in good faith and try and resolve the issues regarding sampling. I don't intend to steamroller over defendants. The defendants are entitled to know what the basis for the proposed methodology is and have adequate information to be able to respond, to have your own experts look at the proposal and see what works, what doesn't work, how it has to be adjusted.

So the defendants shouldn't leave here today thinking that the Court has already decided that I'm going to stamp whatever Mr. Nesser gives me, because that isn't going to happen. If Mr. Nesser wants his sampling methodologies to succeed he better come forward with sufficient information to show that the sample is the appropriate size and quality and historical information is available and all the other things that are going to be required.

It's not going to get decided today. We're going to get this ball rolling, though.

All right. Anybody else want to be heard?

MR. FINKELSTEIN: Thank you, Your Honor.

MR. LEVY: Good afternoon, Your Honor. Richard Levy of Pryor Cashman. I represent Synovus Mortgage, which is the Southeast regional lender regional originator, and Primary Capital, which is a third party seller of loans.

My concern on the sampling, Your Honor, is one that goes to the point Your Honor made about attorneys being poor interlocutors on these kinds of technical matters. Your Honor is suggesting that we need to have experts. Neither of my clients yet have experts in these actions, which are basically five or six weeks old.

The structure that's been proposed today puts us in a position where we have a fourteen-day window where the plaintiff gives us information, a fourteen-day period where we're supposed to be able to respond.

Experts aren't going to be hired tomorrow. It just doesn't happen that way. And Your Honor knows from your own experience that that's not the way the expert process works.

THE COURT: So, but in a case like this, Mr. Levy, and I'll let you continue on. How many loans do your clients have?

MR. LEVY: Your Honor, I don't know the exact numbers. I believe that Synovus is something like 5 or 600. In the Primary Capital case the allegation is something like 800. I think it may be more than that, but I don't think it's I don't think it's anything on the order of the HSBC's or UBS's.

THE COURT: Sure. So what usually happens in a case like this is that you start talking to the other defendants' counsel, and you join together and agree on an expert who can be retained for more than one lender. It's crazy for everybody to have their own expert.

MR. LEVY: That may be, Your Honor. The problem is, though, that, for example, my loan pool may be completely different from somebody else's loan pool.

We're geographically limited in one instance. For example, Synovus is only a Southeastern lender. It's a Southeastern originator. It's going to be different from somebody who's originating or selling third-party loans that come from other geographies where the loan experience may be far worse, where the pools may have been comprised of completely different quality loans. So I can't I understand Your Honor's point, but I think the generalization doesn't necessarily hold that an expert suited to one defendant is necessarily going to be suitable to another.

THE COURT: You got a lot of lawyers out here representing different lenders, and I think you'll solve this problem.

MR. LEVY: We'll do our best, Your Honor. I will say that I think the fourteen-fourteen-fourteen structure puts us in a terrible bind at terrible expense, frontloaded in this case, and it's unfortunate for my clients.

I'll make it very clear. My clients just aren't happy campers today.

THE COURT: Okay. Anybody else?

MR. DOHERTY: John Doherty, Alston & Bird, on behalf of SunTrust. We don't yet have an adversary proceeding number. The case hasn't been docketed. We sort of started with that.

I want to talk about and if this is the appropriate time to do it I'm happy to do it now, sort of, we'll all here.

THE COURT: Yes. Look. It'll be a day before I get an adversary proceeding number.

MR. DOHERTY: Right.

THE COURT: I mean it's going to happen.

MR. DOHERTY: Understood.

THE COURT: And it would be my intention to have this order apply to SunTrust as well. But go ahead.

MR. DOHERTY: So let me just talk about that just a little bit.

THE COURT: Sure.

MR. DOHERTY: Because my case is different. It's different from every other defendant's case that's here. It's different in at least three ways.

The first is the plaintiff has already filed, as of right, its amended complaint. So whereas in paragraph 3 of the case management order

THE COURT: You're ahead of the game.

MR. DOHERTY: Well, they according to the case management order they have a right to file an amended complaint. They've already used that right in the district court. So therefore, as against my client, they don't have that right any longer. So that's one way. If I were to meet and confer with RFC's counsel I would talk to them about that issue. But that's something that should not be in our case management order.

The second is I'm the only defendant in the room who's filed not one, but two, motions to dismiss that are currently before Your Honor. Once this case is referred there will be on the docket it's docket number 34 at the district court level a motion to dismiss the amended complaint that's been fully briefed. And Judge Abrams specifically referred that case to Your Honor for disposition.

So how do we marry the case management order and the pending motion to dismiss? I would propose that we simply keep the motion pending it be decided. Why do I have to go back and rewrite the motion?

THE COURT: You don't.

MR. DOHERTY: Okay. Well, that's see, that

THE COURT: There's nothing in the order that would make you rewrite the motion.

MR. DOHERTY: Right. But according to, I think it's paragraph 4, the setup is there's the omnibus motion, and then

each defendant who has a particular issue writes the ten pager. What I'm suggesting is

THE COURT: What's the grounds for moving to dismiss?

MR. DOHERTY: Well, it's actually multiple grounds. One is a lack of standing, because if you look at the it's very interesting. If you look at the plaintiff in the different cases, sometimes it's RFC. Sometimes it's the Liquidating Trust. Cases filed before December 16th, on or before December 16th, the proper plaintiff is RFC. The plan's effective date is December 17th. They can see that in the complaint. They filed against my client RFC filed against my client on the 17th. The Liquidating Trust was the proper plaintiff on that day.

Case law in the Southern District is absolutely clear. That is an incurable defect. The case has to be dismissed. That's the primary basis of the motion. We also have a statute of limitations defense and related defenses.

THE COURT: It's an incurable defect? They can't

MR. DOHERTY: It is an incurable yes.

THE COURT: They can't amend

MR. DOHERTY: No.

THE COURT: to name the Trust as the plaintiff?

MR. DOHERTY: No. Case law is absolutely clear on that.

THE COURT: All right. We'll see.

MR. DOHERTY: Absolutely clear.
THE COURT: I don't want to
MR. DOHERTY: I know.
THE COURT: I don't want to hear your motion today.
MR. DOHERTY: I understand.
THE COURT: Okay.
MR. DOHERTY: But
THE COURT: This is the case management order.
MR. DOHERTY: Exactly.
THE COURT: It's going to apply to your case.
MR. DOHERTY: Understood. I guess the third thing is we have pursuant the district court ordered, right at the beginning of the case in December, ordered plaintiff and defendant to submit a proposed case management order. Which we did. Which we have, which we've agreed to.
THE COURT: It isn't happening. It's this
MR. DOHERTY: No, I understand.
THE COURT: My court. My case. My case management order.
MR. DOHERTY: No, I understand.
THE COURT: I have respect for Judge Abrams. It isn't her order that's going to apply.
MR. DOHERTY: But
THE COURT: I am trying to basically coordinate sixteen, about to be seventeen, cases

MR. DOHERTY: No. I
THE COURT: in this court.
MR. DOHERTY: And that I understand. But I just want to make the point that up until roughly seven business
THE COURT: What mileage are you getting out of making the point that Judge Abrams had proposed a case management order?
MR. DOHERTY: I just want I'm going to compare and contrast, just for a moment. As of
THE COURT: I don't want to hear it.
MR. DOHERTY: As of
THE COURT: I don't.
MR. DOHERTY: Okay.
THE COURT: Look, I am managing the cases on my docket.
MR. DOHERTY: Right.
THE COURT: By tomorrow or the day after your case will be one of the cases on my docket. The cases are going to be following a parallel track, okay? That's why I'm entering a case management order that applies to all of them.
MR. DOHERTY: Right.
THE COURT: Okay?
MR. DOHERTY: My final comment, and the reason I mentioned it is because up until roughly ten days ago I was in the district court. There was a stay of discovery. And all

and I'm going to I'm just going to, you know, again

THE COURT: This is falling on deaf ears. I don't stay discovery pending motions to dismiss.

MR. DOHERTY: No, no, no. I understand. No, I understand.

THE COURT: This is going to be the case management order. It's going to apply as soon as your case hits the docket. I'm going to enter an order in your case making this case management order applicable to your case. If you're not happy with it I'm sorry, but that's the way it goes.

MR. DOHERTY: Okay. What about the issue in terms of the amendment as of right?

THE COURT: I don't have any issue before me at the present time.

MR. DOHERTY: Okay.

THE COURT: Mr. Nesser, are you proposing to

I'm not so sure about this issue as to whether you absolutely can't amend to name the Trust as the plaintiff, but we'll have to deal with that when the time comes.

MR. NESSER: Your Honor, the case management order, as we drafted the proposed case management order, as we drafted it and as it's been submitted to Your Honor without objection from any party, as far as I

THE COURT: Well

MR. NESSER: as far as I understand

THE COURT: It's objected to now.

MR. NESSER: in this respect provides that we are permitted to file amended complaints in all of the actions, and that would include SunTrust. And we think that makes sense because

THE COURT: Look, I'm going to cut this short, because whether the amendment whether you amend whether the amendment works or it doesn't, if you came to me next week, if that paragraph wasn't in there, and you asked this early in the case for leave to amend, I would grant it, okay? Nobody's prejudiced by anything. You think SunTrust is prejudiced? I'll hear about it. You'll move to dismiss the amended complaint because it couldn't be filed. But I'm not changing this paragraph. You'll decide what you're going to do, Mr. Nesser, okay?

MR. DOHERTY: Thank you.

THE COURT: This paragraph is remaining.

MR. NESSER: Thank you, Your Honor.

THE COURT: Anybody else wish to be heard?

Mr. Levy?

MR. LEVY: I want to raise just one very small housekeeping matter. In paragraph 2 of the docket, something I didn't notice until I

THE COURT: Of the docket or of the draft?

MR. LEVY: Excuse me. Of the proposed order.

THE COURT: Yes.

MR. LEVY: Something I didn't notice until Your Honor was explaining the changes on the lead docket's suggestion.

I rise to this point because I'm involved in the Madoff case where there are thousands of actions in front of Judge Bernstein, and he's created a requirement for a single docket filing.

As I read the order, it says any filing affecting two or more of the captioned adversaries shall be filed in the original docket and in the master docket. If it's not involved in the individual case it doesn't get filed on the master docket. Is that Your Honor's intention?

THE COURT: Wait, wait, wait.

MR. LEVY: Because if that's the case

THE COURT: If it involves two or more then the only place you have to file it is in this central docket. There's going to be a link, okay? I checked. I went over this with the clerk to make sure it was going to you have to list both captions on the pleading.

MR. LEVY: Because my suggestion, Your Honor, was going to be that what Judge Bernstein does and what Judge Rakoff did in the district court is every filing in every affected adversary proceeding, whether it was one affecting one or several adversary proceedings was filed in the master case, so everybody got immediate notice of what was happening

in all the other proceedings.

THE COURT: This is what's going to be, Mr. Levy.

MR. NESSER: Thank you, Your Honor.

THE COURT: Anybody else want to be heard?

So, Mr. Nesser, I'm going to stick with the fourteen on the sampling, fourteen-fourteen-fourteen. I'm uneasy, okay? I'm uneasy about it. And I said that, I think, even before we started, when I said I did this fourteen-fourteen-fourteen.

I don't want to go through an empty exercise. I'm concerned that you're not going to be able to provide each defendant whom you propose sampling with enough information that the defendant, in consultation with its own expert, is going to be able to give you an intelligent response. And I don't want to rope-a-dope, you know, we need every piece of paper that ever existed with respect to every loan. But I'm concerned, okay? And I don't want you really think you're going to be able to carry this off?

MR. NESSER: We do, Your Honor.

THE COURT: We'll see.

MR. NESSER: We will, Your Honor.

THE COURT: Just bear with me.

(Pause)

THE COURT: Well, I'm thinking this order's going to be entered tomorrow. Forty-two days from tomorrow is August 27th. Tuesday August 26th is a ResCap omnibus hearing date.

I'm going to schedule a case management scheduling conference for 11 a.m. on August 26th with respect to these adversary proceedings, principally to discuss sampling. If there are other issues that have to come up they will, but I want to see where you are. It's the day before the deadline for, you know, it's forty-one days in, and it is an omnibus day.

By the way, I'm also scheduling a case management conference for October 14th at 10 a.m. What I try to do is try and stay on top of cases and monitor what issues are coming up along the way, hence the October 14th date, but we'll have a conference at 11 o'clock. The ResCap omnibus is at 10, and I don't know what's going to be on that or not, but we'll set this for 11 o'clock. Hopefully you won't have to wait very long.

On August 26th sampling methodologies is front and center. If there are other issues people want to raise I guess what I would ask is that by 5 p.m. Wednesday, August 20th send me a status letter that includes any issues that any of the counsel propose for discussion on August 26th. Any of the defendants' counsel who have an issue they want raised, give it to Mr. Nesser. Let me get a single letter. He doesn't have to elaborate, but just so I know what items are going to be discussed. So let Mr. Nesser know what, if anything, you want discussed.

Okay. I mean, I don't think I've heard anything from any of the counsel today objecting to what I'm proposing that I wasn't concerned about before with respect to sampling. But if you want to move this along with this proposed speed you and your colleagues have a lot of work to do. I'm willing to move it quickly, and I want to move it quickly, but the defendants are entitled to a fair opportunity to either argue no sample, or that the methodology proposed is inappropriate, or they haven't given us enough information to be able to respond to it. Okay.

MR. NESSER: Yes, Your Honor.

THE COURT: Okay. Anything else anybody else wants to

All right. So this order should be entered tomorrow. I think I've covered whatever changes I made. And it is my intention to e-mail a copy to the judges in Minnesota. I hope I'm not offending any of them by putting this schedule together. If it was one or two judges I would have just picked up the phone and see if we could work it out, but there's just too many to try and do it. But I want to make clear if I hear back they think some different schedule should apply I may be persuaded, and we may wind up altering it. I don't think it'll be shortened, but it could be that things would get lengthened.

Mr. Levy, is there something else you wanted to add?

MR. LEVY: Yes, Your Honor. I just wanted to say I understand the Court's going to enter the case management

order. I want to make clear, on behalf of my clients, that we think we're different. We're entitled to a separate trial. We believe we should be treated separately.

THE COURT: Who's talking about trial?

MR. LEVY: Excuse me. Separate we believe we're entitled to proceedings that are separate to us. I'm simply stating it for the record on behalf of my clients.

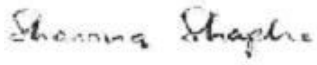
THE COURT: Okay. You've made your point. Anybody else want to be heard?

Okay. Thank you very much. And I really do appreciate the effort that went into getting this to the point where it is.

(Whereupon these proceedings were concluded at 3:26 PM)

**C E R T I F I C A T I O N**

**I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.**



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**Date: July 16, 2014**